

AMENDMENTS TO THE DRAWINGS

1. The attached sheet of drawings, which includes FIGS. 1-2, replaces the original sheet including FIGS. 1-2. Original FIGS. 1-2, which were mostly hand sketches, have been replaced with identical but professionally drafted sketches for clarity.
2. Attachment: One Replacement Sheet.

REMARKS

1. In response to the Office Action mailed August 28, 2006, Applicants respectfully request reconsideration. Claims 1-28 were last presented for examination. In the outstanding Office Action all claims were rejected. By the foregoing Amendments, one (1) claim has been amended. No claims have been cancelled. No claims were added. Thus, upon entry of this paper, Claims 1-28 will remain pending in this application. Of these twenty-eight (28) claims, three (3) claims (Claims 1, 23 and 24) are independent.

2. Based on the above Amendments and following Remarks, Applicants respectfully request that the outstanding objections and rejections be reconsidered, and that they be withdrawn.

Claim Amendments

3. Applicants submit that the above Amendments have not been made to overcome or accommodate any objection or rejection or to otherwise distinguish Applicant's claimed invention.

4. Applicants further submit that no new matter has been added by the foregoing amended.

Art of Record

5. Applicants acknowledge the receipt of form PTO-892 listing additional references identified by the Examiner.

Claim Rejections under 35 U.S.C. § 112

6. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. By the foregoing amendment to Claim 9, this rejection has been obviated. Accordingly, Applicants request that this rejection be withdrawn.

Claim Rejections under 35 U.S.C. § 102

5. Claims 1-3, 7, 8, 14-20, 22-24, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,119,044 to Kuzma (Kuzma). Applicants respectfully traverse these rejections.

6. As set forth in MPEP §706, “[For] anticipation under 35 U.S.C. 102, the reference must teach *every aspect of the claimed invention* either explicitly or impliedly. Any feature not directly taught must be inherently present (emphasis added).” Therefore, for a proper rejection under 35 U.S.C. 102, the cited reference must teach or suggest every aspect of the claimed invention. As set forth in 37 C.F.R. §1.104(c)(2), “In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, *the particular part relied on must be designated as nearly as practicable*. The *pertinence* of each reference, if not apparent, *must be clearly explained* and each rejected claim specified (emphasis added).” Therefore, a proper rejection must designate with particularity the portions relied upon, and explain the pertinence of each portion relied upon when not apparent. For at least the reasons set forth below, the Examiner has erroneously and improperly ignored the requirements of 37 C.F.R. 1.104(c)(2) and MPEP § 706. As such, the rejections of claims 1-3, 7, 8, 14-20, 22-24, 27 and 28 are *prima facie* improper.

7. Specifically, the Examiner asserts that “Kuzma teaches of a device... [having] a tip member... comprising a distally tapered portion [and which is] resiliently flexible (see for example Abstract, col. 11 lines 39-42).” (See, Office Action, pp. 3-4, ¶4.) However, the Examiner fails to provide factual evidence which actually supports this allegation, particularly for the limitation “resiliently flexible” as claimed by Applicants.

8. The cited portion of column 11 of Kuzma states, in its entirety, “As further seen in FIG. 4, a soft tip 37, having a depth of distance L8, is typically formed from LSR-25 at the very distal tip of the electrode array 30. In the preferred embodiment, L8 has a value of approximately 0.3mm.” (See, Kuzma, col. 11, ll. 39-42.) Figure 4 of Kuzma shows a tip 37 which appears to be semi-circular in shape. Applicants note that the cited Abstract of Kuzma contains no reference to any tip member. (See, Kuzma, Abstract.) This portion of Kuzma relied on by the Examiner, nor any other portion of Kuzma disclose, teach or suggest a tip member which is constructed to be “resiliently flexible”. Therefore, the Office Action fails to comply with the requirements of 37 C.F.R. 1.104(c)(2).

9. Accordingly, Applicants respectfully request that the Examiner either (1) provide factual evidence, directing Applicants to specific portions of Kuzma or other references relied upon, including an explanation as to the pertinence of such portions with regard to a

“resiliently flexible” tip member as defined and described by Applicants, OR (2) withdraw the rejection of these claims.

10. The Examiner rejected claims 1-3, 7, 8, 14-20, 22-24, 27 and 28, alleging that Kuzma discloses a tip member having a “tapered portion” and which is “resiliently flexible” as claimed. The Examiner refers to the Abstract and column 11, lines 39-42 of Kuzma in support of this rejection. (See, Office Action, pp. 3-4, ¶4.) Applicants respectfully disagree.

11. The Examiner fails to show how all features of the noted claims are taught or suggested by Kuzma. The cited portion of column 11 of Kuzma states, in its entirety, “As further seen in FIG. 4, a soft tip 37, having a depth of distance L8, is typically formed from LSR-25 at the very distal tip of the electrode array 30. In the preferred embodiment, L8 has a value of approximately 0.3mm.” (See, Kuzma, col. 11, ll. 39-42.) The referenced Figure 4 of Kuzma shows a semi-circular tip 37. There is no teaching or suggestion in Kuzma to provide a “tapered portion” as claimed. For this reason alone, these rejections should be withdrawn.

12. Furthermore, a leap in logic exists in the Office Action when a “soft tip” is read to encompass “resiliently flexible”. This can be seen by the fact that Applicants themselves disclose as prior art a tip member which is simply “soft” *without* being “resiliently flexible”, and the problem associated with a non-resiliently flexible soft tip member. In the text of the application, Applicants discuss prior art tip members which were “too flexible such that during the insertion process the tip would catch on the wall of the cochlea and cause the array to bend back on itself.” (See, Application, ¶ 8.) Also, Applicants show in figures 1 and 2, as well as describe in the Application text, prior art tip members which have a “bulbous distal end” and a “relatively narrow diameter neck section 112 which is designed to provide increased flexibility” to the tip member (i.e. soft tip). (See, Application, ¶ 72, Figs. 1 and 2.) Applicants further describe in the Application text that “during insertion [when] a force is applied to [prior art] tip member 102... tip member 102 will flex about neck section 112 causing distal end 108 to undergo excessive deflection, indicated by ghost lines 124, greatly increasing the possibility of tip member 102 folding over upon itself during insertion.” (See, Application ¶ 72.)

13. Therefore, as Applicants describe, prior art tip members which are too flexible (i.e. soft tips) as well as an invention which provides a solution, in the form of a “resiliently flexible” tip, to such a problem, it would be a logical leap to read “soft tip” to automatically

encompass a “resiliently flexible”. Therefore, a soft tip should not be read to be “resiliently flexible”.

14. Furthermore, in addition to a leap in logic existing when the “soft tip” of Kuzma is read to encompass “resiliently flexible,” Kuzma never addresses the problem of a tip which folds over onto itself during insertion. This lends yet further support to the notion that Kuzma neither teaches nor suggests a tip member which is constructed to be resiliently flexible.

15. Therefore, Kuzma fails to disclose a tip member which is constructed to be “resiliently flexible”. As such, Kuzma fails to teach or suggest all aspects of Applicants’ invention as disclosed. Accordingly, Applicants respectfully assert that the rejections of these claims are improper and should be withdrawn.

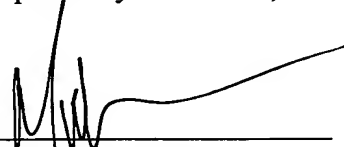
Dependent Claims

16. The dependent claims incorporate all of the subject matter of their respective independent claims and add additional subject matter, which makes them a fortiori and independently patentable over the art of record. Accordingly, Applicants respectfully request that the outstanding rejections of the dependent claims be reconsidered and withdrawn.

Conclusion

17. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

Respectfully submitted,



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